

## **"WHAT CAN THE MANDATORY FEE ARBITRATION PROGRAM DO FOR ME?"**

### **What is the Mandatory Fee Arbitration Program?**

Clients have the right to have a neutral party—"an arbitrator"—hear fee disputes with their attorneys. The arbitrator determines whether the fees and costs charged by the attorney are reasonable for the services provided. The Mandatory Fee Arbitration Program provides an opportunity to have a volunteer arbitrator resolve attorney fee and cost disputes between clients and attorneys through an informal, low-cost alternative to the court system.

### **Do I Need an Attorney to Assist Me?**

You do not need an attorney to represent you in a fee arbitration. You may choose to hire an attorney at your own expense, but you should be aware that the arbitration award cannot include the attorney's fees incurred for the preparation or appearance for the arbitration hearing.

### **How Does the Program Work?**

After you submit a completed arbitration request form and the required filing fee to the program, the program will send a copy of your request to the attorney for a written response. You will receive a copy of any response received. A sole arbitrator or a panel of three arbitrators (depending on the amount in dispute) will be assigned to listen to both you and the attorney to determine whether the attorney's fees and costs were reasonable. If it is determined that you paid the attorney more than the arbitrator decides is reasonable, you may be awarded a refund of attorney's fees or costs. Alternatively, it may also be determined that no refund is owed or that you owe fees to the attorney.

Depending on the circumstances, the arbitrator(s) will consider a number of factors in making this decision. These may include: whether there was a written fee agreement; the reasonable value of the attorney's services; the amount of time the attorney spent on your case; and whether any misconduct or incompetency by the attorney affected the value of the services. The arbitrator(s) will decide the matter based only upon the evidence presented at the hearing.

### **If I Believe That The Attorney Engaged in Misconduct or Malpractice, Will Fee Arbitration Be Able To Help Me?**

The Mandatory Fee Arbitration Program cannot help you recover damages or offset expenses incurred for attorney malpractice or misconduct.

If the arbitrator determines that the attorney's malpractice or professional misconduct reduced the value of the attorney's services, the arbitrator can reduce the attorney's fees accordingly. By law, however, the arbitrator(s) cannot offset the fee or order the

attorney to pay you for any damages the attorney's conduct may have caused. If you believe that you have a separate claim for attorney malpractice, you should discuss the matter with an independent attorney.

### **What If I Believe The Attorney's Conduct Should Be Reported?**

The Mandatory Fee Arbitration Program does not have authority to discipline attorneys for professional misconduct.

If you wish to file a disciplinary complaint with the State Bar of California about your attorney's conduct, you may call the **State Bar's toll-free number: (800)843-9053**. You may also ask the State Bar for a copy of the pamphlet "What Can I Do If I Have A Problem With My Lawyer?" The pamphlet may be accessed from its website: **[www.calbar.ca.gov](http://www.calbar.ca.gov)**.

Keep in mind that a discipline complaint and a request to arbitrate a fee dispute are separate matters. Filing a complaint may result in disciplinary action against the attorney; however, the result may or may not require the attorney to make a refund.

### **Should I Agree To Binding Arbitration?**

Fee arbitrations are non-binding unless the parties agree in writing to binding arbitration after the dispute arises but prior to the hearing. If the arbitration is binding, the award is final and neither you nor the attorney may request a new trial in court. A binding award can only be corrected or vacated for very limited reasons.

If the award is non-binding, a party has 30 days from the date of service of the award to file an action in court requesting a trial. If a trial is not requested within the 30 days, the award automatically becomes binding.

### **How Do I Request Fee Arbitration?**

To initiate fee arbitration, you must complete a fee arbitration request form from the appropriate bar association and submit the filing fee set by the particular program. Attach copies of any documents requested on the form. You will have an opportunity to present additional information at the arbitration hearing. You should include information that specifically relates to the attorney's fees and costs and explain why you believe the attorney's fees are excessive or that no additional fees are owed.

### **What Is My Deadline For Requesting Fee Arbitration?**

If you received a *Notice of Client's Right to Arbitration* form from the attorney, you have 30 days from the date of its receipt to submit your arbitration request form to the program. If you do not file the request form with the program within that time period, you will lose your right to arbitrate your fee dispute. A telephone call or letter to the program requesting arbitration will not protect that right. You must be sure that the request form is completely filled out, and that you have included any filing fee that may be required.

If the attorney has already filed a lawsuit against you for unpaid fees, you may elect to either respond to the lawsuit or request fee arbitration. If you file a response to the lawsuit, you will lose your right to arbitrate the fee dispute. If you request arbitration, the lawsuit will be stayed but you should file the appropriate notice of automatic stay with the court. To preserve your right to arbitrate, you should file a request for arbitration promptly.

### **When Do I Receive the Arbitration Decision?**

Unless the parties reach a settlement agreement, a decision (the “Findings and Award”) will not be made at the hearing. Within the time set by the program, the arbitrator’s Findings and Award will be mailed to you following the hearing. You will also receive a *Notice Of Your Rights After Fee Arbitration* form.

The award may provide for a refund of fees and costs from the attorney to you, an amount of outstanding fees owed to the attorney, or a determination that no money is owing to either party. The arbitrator may also allocate payment of the program filing fees to either party.

For further information about the fee arbitration process, please contact this program at the address below:

**The Mandatory Fee Arbitration Program  
The State Bar of California  
180 Howard Street, 6<sup>th</sup> floor  
San Francisco, CA 94105  
(415) 538-2020**